IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

O R D E R
IN
S.B. Civil Review Petition No.44/2006
In
S.B. Civil Second Appeal No.309/2006

Prem Sukh Surana S/o Shri Sugan Chand
...petitioner
Versus
Lalit Narain Mathur S/o Shri Chuttanlal
...Respondent

Date of Order ::: 19.10.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Prem Sukh Surana, Petitioner, present-in-person
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By the Court-

Heard the petitioner-in-person on the application under Section 5 of the Limitation Act for condonation of delay of 61 days in filing the Review Petition as well as on Review Petition also.

Vide order dated 3rd of July, 2006, of which review is sought for, this Court dismissed the S.B. Civil Second Appeal No.309/2006 of the defendant-appellant (petitioner herein). While dismissing the second appeal, this court considered the fact that the plaintiff-respondent (respondent herein) filed a suit for eviction against the petitioner/tenant in respect of rented premises for personal bona-fide need of the respondent himself as well as need of his grandson, who is having a Degree of Bachelor and is an unemployed. Both the courts below recorded a finding

of fact in respect of bona-fide need of the respondent for himself as well as his grandson.

This Court, while considering the second appeal on 3.7.2006, also considered the application dated 8th/9th June, 2006 of the petitioner for taking additional affidavit on record, but the said application was dismissed for the reasons mentioned in the order.

It appears from the review petition that the order dated 3.7.2006, sought to be reviewed, was challenged before the Hon'ble Supreme Court in S.L.P. (Civil) No.15480/2006 and the same was dismissed by the Hon'ble Supreme Court on 25.9.2006.

The petitioner contended that in his affidavit dated 8.6.2006 he also mentioned a fact that Sorabh Mathur S/o Shri S.N. Mathur is serving as System Interigator in H.C.L. Info System Limited G-8-9-10, Sector 3, Noyada (U.P.), since last more than two years, therefore, the need of the rented premises of the respondent for his grandson does not exist but the said subsequent event has not been taken into consideration by this court while dismissing second appeal of the petitioner.

The aforesaid contention about employment of grandson of the respondent was taken in the additional affidavit dated 8.6.2006 in addition to other facts but it is clear from the order dated 3.7.2006 that only one point was argued from the additional affidavit that respondent Lalit Narain Mathur is having no clear title over the property in dispute. It is relevant to mention that petitioner has not filed affidavit of his counsel who argued his second appeal on 3.7.2006 in support of his contentions. However,

the application for taking additional affidavit on record itself was rejected, therefore, none of the fact mentioned in the additional affidavit can be looked into being not part of the record.

As per contention of the petitioner, Shri Sorabh Mathur is serving as System Interigator in H.C.L. Info System Limited, for last two years, but this point was not taken by him before the first appellate court, which is a fact finding court. No application for amendment in the written statement was filed by the petitioner nor any issue in this regard was framed. This fact does not borne out from the judgment of the first appellate court also. The petitioner has not placed on the record a copy of the appointment order of Shri Sorabh Mathur to show the nature of appointment, whether it was casual or temporary or permanent, in support of his contention in the additional affidavit. It is also relevant to mention that decree of eviction has been passed for bona-fide need of plaintiff also in addition to his grandson.

Apart from above, the Hon'ble Supreme Court in *Gaya Prasad Vs. Pradeep Srivastava (2001) 2 SCC 604*, considered and held that landlord after moving an application for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. Paragraph 10 of the above referred judgment is reproduced as under:-

> "10. We have no doubt that the crucial date for deciding as to

the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the

> litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.”

Considering all the facts and circumstances of the case, this court is of the view that the aforesaid subsequent event highlighted by the petitioner was not taken in the argument before the courts below and there is no finding in this regard by the courts below, and further the same is not sufficient to over-shadow the bona fide need concurrently found by the fact finding courts.

So far as the application under Section 5 of the Limitation Act is concerned, it is relevant to mention that if the grievance of the appellant was that the aforesaid point was argued and the same was not dealt with in the order then the petitioner ought to have filed the review petition immediately without any delay along with affidavit of his counsel but the same was not done. The Hon’ble Supreme Court has not granted any liberty to the petitioner to file the present review petition in its order dated 25.9.2006 also. The delay in filing the review petition has not been explained with sufficient reasons also, therefore, the application under Section 5 of the Limitation Act for condonation of delay of 61 days in filing the review petition, is dismissed. Consequently, the review petition is dismissed being barred by limitation as well as on merits also.

(Narendra Kumar Jain) J.

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